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April 10, 1995

APR 10 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Amendment of Section 73.202(b), Table of Allotments,  
FM Broadcast Stations (Burlington, Colorado; Brewster,  
Kansas) (MM Docket No. 94-134; RM-8538, RM-8589)

Dear Mr. Caton:

On behalf of KNAB, Inc., there is transmitted herewith an original and four copies of its "Response to Request For Leave to File Opposition to Motion to Dismiss" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,



Ann Bavender  
Counsel for KNAB, Inc.

AB:mah  
Enclosures

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments, )  
FM Broadcast Stations )  
(Burlington, Colorado; )  
Brewster, Kansas) )

MM Dkt. No. 94-134  
RM-8538  
RM-8589

To: Chief, Allocations Branch

**RESPONSE TO REQUEST FOR LEAVE  
TO FILE OPPOSITION TO MOTION TO DISMISS**

KNAB, Inc. ("KNAB"), by its attorneys, hereby submits its response to the Request For Leave To File Opposition To Motion To Dismiss ("Request")<sup>1</sup> filed on April 3, 1995 by Bruce Corman, Kay Hanley, and Charley P. Barnes ("Petitioners") in the above-referenced proceeding. With respect thereto, the following is presented:

Petitioners erroneously claim in their Request that a Motion To Dismiss filed by KNAB on March 13, 1995 ("Motion") was unauthorized. In so doing, Petitioners assert that the Commission's rules do not provide for the filing of pleadings beyond the comment and reply comment periods specified for an allotment proceeding. Petitioners fail to recognize, however, that a motion to dismiss can be filed at any time, especially where it points out fatal procedural defects in prior filed pleadings, which is exactly what KNAB's Motion does. In fact, KNAB's Motion did not respond to the many improper matters addressed in Petitioners's prior pleading, but it did request leave to respond to

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<sup>1</sup>Petitioners's Request is untimely since, pursuant to Section 1.45 of the Commission's rules, an opposition would have been due on March 28, 1995.

such matters if the Motion is denied. KNAB's Motion is procedurally correct and should be granted.

WHEREFORE, for the foregoing reasons, KNAB, Inc. requests that the Commission deny the Request For Leave To File Opposition To Motion To Dismiss filed by Petitioners in this proceeding as improper and untimely.

Respectfully submitted,

KNAB, INC.

By:   
Richard Hildreth  
Ann Bavender  
Its Attorneys

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1300 North 17th Street, 11th Floor  
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(703) 812-0400

April 10, 1995

**CERTIFICATE OF SERVICE**

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Response to Request for Leave to File Opposition to Motion to Dismiss" were sent this 10th day of April, 1995, by first-class United States mail, postage prepaid, to the following:

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Mary A. Haller  
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